2. Must the first subparagraph of Article 5(1) of Directive 2004/17 be interpreted as meaning that an activity which is carried out by a railway company such as is referred to in Directive 2012/34 and which entails the provision of transport services to the public on a rail network constitutes the provision or operation of a network as referred to in that provision of the directive?

(1) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (Utilities Directive) (OJ 2004 L 134, p. 1).
(2) Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ 2012 L 343, p. 32).

Request for a preliminary ruling from the Curtea de Apel Oradea (Romania) lodged on 29 June 2017 — Sindicatul Energia Oradea v SC Termoelectrica SA

(Case C-392/17)

(2017/C 293/24)

Language of the case: Romanian

Referring court

Curtea de Apel Oradea

Parties to the main proceedings

Applicant: Sindicatul Energia Oradea

Defendant: SC Termoelectrica SA

Question referred

Are the provisions of Order No 50/1990, as interpreted by judgment No 9/2016 given by the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania) on a matter of public policy — a judgment binding on courts of law, according to which occupations classified in groups I and II are strictly and rigorously limited to those set out in Annex 1 and 2 of that order, and the courts may not extend the provisions of that order to include other similar cases, with the consequence that those former workers cannot receive the pension benefits owed as a result of the hard working conditions in which they have carried out their work — compatible with Articles 114(3), 151 and 153 TFEU, and with the provisions of framework Directive 89/391/EEC (1) and successive specific directives?

(1) Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1).

Action brought on 3 July 2017 — European Commission v Czech Republic

(Case C-399/17)

(2017/C 293/25)

Language of the case: Czech

Parties

Applicant: European Commission (represented by: P. Němečková and E. Sanfrutos Cano, acting as Agents)

Defendant: Czech Republic

Form of order sought

— declare that, by failing to ensure that TPS-NOLO (Geobal) material shipped from the Czech Republic to Katowice, Poland, was transported back to the Czech Republic, the Czech Republic has failed to fulfil its obligations under Article 24(2) and Article 28(1) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste ([1]);

— order the Czech Republic to pay the costs.

Pleas in law and main arguments

1. The TPS-NOLO (Geobal) material that was transported from the Czech Republic to Poland, which comes from hazardous wastes from a waste dump (the Ostramo lagoons), is deposited at another site in the Czech Republic and is classified as waste tar from refining, distilling or pyrolytic treatment of organic materials, is, according to the Polish authorities, waste falling within Annex IV to Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste ('the Waste Shipments Regulation').

2. In view of the fact that the Czech Republic disputes the classification of the substance in question as waste, on the ground of the registration of the material under Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC ([2]) ('REACH'), a conflict situation has arisen, which is dealt with by Article 28(1) of the Waste Shipments Regulation, by providing that the material in question is to be treated as if it were waste.

3. Registration of the material in accordance with registration under REACH does not ensure that use of the substance will not lead to a harmful overall effect on the environment or human health, or that the substance automatically ceases to be waste. Where there is no national decision that the substance in question has reached a state in which waste ceases to be waste, the registration of that substance under REACH may not be regarded as valid on the basis of Article 2(2) of REACH.

4. As the substance in question was transported across the frontier without notification, the transport is to be regarded as an 'illegal shipment' under Article 2(35)(a) of the Waste Shipments Regulation. In that case, the competent authority of dispatch is to obtain information by an appropriate procedure to ensure that the waste in question is taken back in accordance with Article 24(2) of the regulation, which the Czech Republic unjustifiably refuses to do. That obligation is not precluded by Article 128 of REACH, which guarantees the free movement of substances, mixtures or articles within the meaning of Article 3 of REACH, since waste is expressly excluded from the scope of that regulation (see Article 2(2) of REACH).

([1]) OJ 2006 L 190, p. 1.
([2]) OJ 2006 L 396, p. 1.

Request for a preliminary ruling from the Förvaltningsrätten i Malmö, migrationsdomstolen (Sweden) lodged on 6 July 2017 — A v Migrationsverket

(Case C-404/17)

(2017/C 293/26)

Language of the case: Swedish

Referring court

Förvaltningsrätten i Malmö, migrationsdomstolen